

§ 11.33

NAD official responding to an oral request for information may ask the requester to also submit his or her request in writing.

(e) If a request for records or a fee waiver under this subpart is denied, the person making the request shall have the right to appeal the denial. Requesters also may appeal NAD decisions regarding a requester's status for purposes of fee levels under section 5 of Appendix A, subpart A of part 1 of this title. All appeals must be in writing and addressed to the official designated in § 11.33. To facilitate processing of an appeal, the phrase "FOIA APPEAL" should be placed in capital letters on the front of the envelope.

(f) NAD shall develop and maintain a record of all written and oral FOIA requests and FOIA appeals received by NAD, which shall include, in addition to any other information, the name of the requester, brief summary of the information requested, an indication of whether the request or appeal was denied or partially denied, the FOIA exemption(s) cited as the basis for any denials, and the amount of fees associated with the request or appeal.

§ 11.33 Appeals.

Any person whose initial FOIA request is denied in whole or in part may appeal that denial to the Director, National Appeals Division, U.S. Department of Agriculture, 3101 Park Center Drive, Suite 1113, Alexandria, Virginia 22302. The Director will make the final determination on the appeal.

APPENDIX A TO SUBPART C OF PART 11— LIST OF ADDRESSES

This list provides the titles and mailing addresses of officials who have custody of NAD records. This list also identifies the normal working hours, Monday through Friday, excluding holidays, during which public inspection and copying of certain kinds of records is permitted.

Director, National Appeals Division, U.S. Department of Agriculture, 3101 Park Center Drive, Suite 1113, Alexandria, Virginia 22302, Hours: 8 a.m.–5 p.m.

Regional Assistant Director, Eastern Region, National Appeals Division, U.S. Department of Agriculture, 3500 DePauw Boulevard, Suite 2052, Indianapolis, Indiana 46268, Hours: 8 a.m.–5 p.m.

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Regional Assistant Director, Southern Region, National Appeals Division, U.S. Department of Agriculture, 7777 Walnut Grove Road, LLB-1, Memphis, Tennessee 38120, Hours: 8 a.m.–5 p.m.

Regional Assistant Director, Western Region, National Appeals Division, U.S. Department of Agriculture, 755 Parfet Street, Suite 494, Lakewood, Colorado 80215-5506, Hours: 8 a.m.–5 p.m.

PART 12—HIGHLY ERODIBLE LAND AND WETLAND CONSERVATION

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AUTHORITY: 16 U.S.C. 3801, 3812, and 3822(h).

SOURCE: 61 FR 47025, Sept. 6, 1996, unless otherwise noted.

Subpart A—General Provisions

§ 12.1 General.

(a) *Scope.* This part sets forth the terms and conditions under which a person who produces an agricultural commodity on highly erodible land or

designates such land for conservation use, plants an agricultural commodity on a converted wetland, or converts a wetland shall be determined to be ineligible for certain benefits provided by the United States Department of Agriculture (USDA) and agencies and instrumentalities of USDA.

(b) *Purpose.* The purpose of the provisions of this part are to remove certain incentives for persons to produce agricultural commodities on highly erodible land or converted wetland and to thereby—

- (1) Reduce soil loss due to wind and water erosion;
- (2) Protect the Nation's long-term capability to produce food and fiber;
- (3) Reduce sedimentation and improve water quality; and
- (4) Assist in preserving the values, acreage, and functions of the Nation's wetlands.

[61 FR 47025, Sept. 6, 1996, as amended at 76 FR 82077, Dec. 30, 2011]

§ 12.2 Definitions.

(a) *General.* The following definitions shall be applicable for the purposes of this part:

Agricultural commodity means any crop planted and produced by annual tilling of the soil, including tilling by one-trip planters, or sugarcane.

CCC means the Commodity Credit Corporation, a wholly-owned government corporation within USDA organized under the provisions of 15 U.S.C. 714 *et seq.*

Conservation District (CD) means a subdivision of a State or local government organized pursuant to the applicable law to develop and implement soil and water conservation activities or programs.

Conservation plan means the document that—

- (1) Applies to highly erodible cropland;
- (2) Describes the conservation system applicable to the highly erodible cropland and describes the decisions of the person with respect to location, land use, tillage systems, and conservation treatment measures and schedules; and
- (3) Is approved by the local soil conservation district in consultation with the local committees established under section 8(b)(5) of the Soil Conservation

and Domestic Allotment Act (16 U.S.C. 590h(b)(5)) and the Natural Resources Conservation Service (NRCS) for purposes of compliance with this part.

Conservation system means a combination of one or more conservation measures or management practices that are—

(1) Based on local resource conditions, available conservation technology, and the standards and guidelines contained in the NRCS field office technical guides (available from NRCS State offices); and

(2) Designed for purposes of this part to achieve, in a cost-effective and technically practicable manner, a substantial reduction in soil erosion or a substantial improvement in soil conditions on a field or group of fields containing highly erodible cropland when compared to the level of erosion or soil conditions that existed before the application of the conservation measures and management practices.

Conservation use or set aside means cropland that is designated as conservation-use acreage, set aside, or other similar designation for the purpose of fulfilling provisions under any acreage-limitation or land-diversion program administered by the Secretary of Agriculture requiring that the producer devote a specified acreage to conservation or other non-crop production uses.

Creation of a wetland means the development of the hydrologic, geochemical, and biological components necessary to support and maintain a wetland where a wetland did not previously exist. Any wetland established on a non-hydric soil will be considered a created wetland.

Department means the United States Department of Agriculture (USDA).

Enhancement of a wetland means the alteration of an existing wetland to increase its specific functions and values. Enhancement actions include new capabilities, management options, structures, or other actions to influence one or several functions and values.

Erodibility index means a numerical value that expresses the potential erodibility of a soil in relation to its soil loss tolerance value without consideration of applied conservation practices or management.